

JUN 13 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

KENNETH DUANE AGTUCA,

Petitioner - Appellant,

v.

KATHRYN BAIL, Chair, ISRB; JOSEPH
LEHMAN,

Respondents - Appellees.

No. 02-35756

D.C. No. CV-01-00882-TSZ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted June 3, 2003
Seattle, Washington

Before: HUG, B. FLETCHER, and McKEOWN, Circuit Judges.

Kenneth Duane Agtuca asks us to hold that Washington state statutes grant a prisoner a liberty interest in receiving a “certificate of discharge” for a given conviction as soon as the sentence for that conviction has been served. He urges

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

that this liberty interest exists regardless of whether a prisoner remains incarcerated after the completion of the sentence for a discrete conviction, as may occur when, as in Agtuca's own case, a prisoner is serving sentences concurrently. The state's Indeterminate Sentence Review Board ("ISRB") exercised its discretion not to issue a certificate of discharge to Agtuca, given his circumstances. Agtuca argues that this refusal to acknowledge that he had finished serving a sentence violates his right to due process.

Because Agtuca did not raise a federal law claim, whether there is a due process violation hinges on an alleged violation of state law, and we are bound by the determination of the state court as to the meaning of its own statutes. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). In deciding Agtuca's direct appeal, the state court of appeals interpreted the statutes in question as granting the ISRB discretion as to whether to issue or withhold a certificate of discharge when a prisoner remains incarcerated on other convictions. It concluded that, because the issuance of a certificate is discretionary, Agtuca has no liberty interest. We affirm the district court's denial of the writ. The petition is

DENIED.